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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/387,809 09/01/99 HODGKINS

E FO-3-C1

EXAMINER

IM62/0619

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SAYALA, C

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

06/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/38209

Applicant(s)

Hodgkins

Examiner

Payala

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-21 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4+5
- ☐ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

SERIAL NUMBER 09/387809
Art Unit 1761

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moser (Compendium on Continuing Education for the Practicing Vet., Vol. 13(4), pages 607-611, 1991), specification at page 2, lines 20-23, MacDonald et al. (Ann. Rev. Nutr., vol. 4, pages 521-62, 1984) or Rogers et al. (Enzyme, vol. 22, pages 348-56, 1977) or Kealy (US Patent 3930031) in view of Sunvold (US Patent 5932258) and Bruno et al. (US Patent 6013622).

It has been known in the art to treat diabetic cats with minimal carbohydrate. See the abstract of Moser. The specification at page 2, lines 20+ states that the "obligate carnivore normally has very low intake of carbohydrates", while MacDonald et al. teach that the fat acceptance in cats was 25% (page 527, last para) the protein requirement was 20% for the for the adult cat (page 533) and no dietary requirement for carbohydrate has been demonstrated for the cat (page 531, last 2 lines). Furthermore, it has been recognized in prior art that the cat has a high protein requirement. See Rogers et al at page 349. That reference teaches a diet with 70% protein and 12.5% fat, but does not teach a carbohydrate amount, in keeping with prior art disclosures as discussed above.

SERIAL NUMBER 09/387809

Art Unit 1761

Kealy also teaches a cat food product that has about 28% by weight protein (col. 4, line 53). The fat content is between 5 and 12% by weight of the diet. See col. 6, lines 60-61. The carbohydrate content is not disclosed, although the diet contain some carbohydrate, see col. 4, lines 5-15.

Sunvold teaches at col. 1, lines 64+ to col., lines 1-13 that a composition to improve glucose metabolism in companion animals by controlling post-prandial glycemic response in those animals, which contains 25-35% protein 8-12% fat and source of starch, as required.

Bruno et al show that caloric requirements vary depending on animal size and species. In cats for example, the diet will depend on the age of the cat and the reproduction state. A general guideline for cats is given as 30-40% protein, about 7-10% carbohydrate and about 50-62.5% fat. Col. 7, lines 20-30.


Even though it is recognized by the artisans as evidenced by the applied at above that, carbohydrate levels for a cat diet should be at a minimal, that there is no dietary requirement for carbohydrate demonstrated, that the cat has a high protein requirement, even though Bruno et al in their diet gives amounts from about 50% to 62.5%, it would have been obvious to take into consideration the teachings of the references of Moser, MacDonald et al or Roger et al or Kealy, Sunvold together with Bruno et al and to optimize fat content to between 10-40% as shown by them. To optimize diet contents based on this combination of references, depending on the size, species and reproductive state of the cat would have been within the realm of ordinary skill in

SERIAL NUMBER 09/387809
Art Unit 1761

the art, particularly when Sunvold prevents obesity/diabetes by using 8-12% fat for cats.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to Examiner C. Sayala at Group 1761, telephone number (703) 308-3035. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661. The fax phone number for this Group is (703)305-3599.


C. Sayala
Primary Examiner
Group 1761.